

**REMARKS**

Claims 1 – 27 have been examined. Claims 1, 5, 11, 12, 16, 18, 19, 23, and 25 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Publ. No. 2002/0106144 (“Garverick”); Claims 1, 7 – 12, 17 – 19, and 24 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Publ. No. 2003/0089016 (“Vaganov”); and Claims 2 – 4, 13 – 15, and 20 – 22 stand rejected under 35 U.S.C. §103(a) as unpatentable over Garverick<sup>1</sup> in view of U.S. Pat. No. 6,240,233 (“Glance”). Claims 26 and 27 have been identified as allowable except for their dependence on rejected base claims.

The claims have been amended to clarify the relationship between the sensing configuration and the MEMS device. In particular, independent Claims 1, 12, and 19 have been amended to limit them to those embodiments where the sensing configuration is formed within a substrate comprised by the MEMS device over which the moveable element is formed (*see, e.g.*, Application, Figs. 3A and 3B and related discussion at p. 7, ll. 7 – 20). In addition, Claims 5, 16, and 23 have been canceled, with new Claims 28 – 36 added to correspond to those embodiments where the sensing configuration is formed with fixed sensing elements formed over the substrate comprised by the MEMS device (*see, e.g., id.*, Figs. 4 and 5 and related discussion at p.8, l. 28 – p. 10, l. 9).<sup>2</sup>

The combination of limitations embodied by independent Claims 1, 12, 19, 28, 31, and 34 is not taught or suggested by the cited art. For example, in the rejections that rely on Garverick, the Office Action identifies the sensing configuration as the combination of an optical performance monitor 26 and microprocessor 30 (*see, e.g.*, Office Action, p. 2). These are components external to the MEMS device and are neither formed within a substrate of the MEMS device nor formed as fixed sensing elements over a substrate of the MEMS device.

In the rejections that rely on Vaganov, the Office Action identifies the sensing configuration as a contact edge 18 and reference surface 16 of a rolling micromirror (*see, e.g.*,

---

<sup>1</sup> The Office Action indicates that the § 103(a) rejections are over Vaganov in view of Glance, but the detailed comments refer only to Garverick and not to Vaganov.

Appl. No. 10/080,789  
Amdt. dated October 21, 2003  
Reply to Office Action of July 23, 2003 (paper no. 3)

PATENT


*id.*, p. 4). These elements are not components formed within a substrate of the MEMS device nor formed as fixed sensing elements over a substrate of the MEMS device. It is noted that the micromirror or portions of it cannot be identified both with the moveable element and one of the fixed sensing elements since one of those elements is required to be moveable and the other is required to be fixed.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

  
Patrick M. Boucher  
Reg. No. 44,037

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: 303-571-4000  
Fax: 415-576-0300  
PMB:pmb  
60040358 v1